



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534**

January 28, 2008

Jeff and Cheryl Huff  
510 Montgomery Road  
Jamestown, Tennessee 38556

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 5091**

Subject: DIRECTOR'S ORDER NO. WPC07-0273  
JEFF AND CHERYL HUFF  
FENTRESS COUNTY, TENNESSEE

Dear Mr. and Mrs. Huff:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Vojin Janjic, Manager  
Enforcement and Compliance Section

VMJ:BPB

cc: DWPC – EFO-Knoxville  
DWPC – Compliance File  
OGC



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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**IN THE MATTER OF:**

**JEFF HUFF and CHERYL HUFF**

**RESPONDENTS**

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**DIVISION OF WATER  
POLLUTION CONTROL**

**CASE NUMBER WPC07-0273**

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

**II.**

Jeff and Cheryl Huff (hereinafter the "Respondents") are residents of the state of Tennessee and are the owners of property located on State Route 297 near the intersection of State Route 154, in Fentress County (hereinafter "the site"). Service of process may be made on the Respondents at 510 Montgomery Road, Jamestown, Tennessee 38556.

**JURISDICTION**

**III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred,



or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

#### IV.

The Respondents are “persons” as defined by T.C.A. § 69-3-103(20) and as herein described, have violated the Act.

#### V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associate with Construction Activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

#### VI.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification.



No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## **VII.**

Hatfield Creek and its unnamed tributaries, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

## **FACTS**

## **VIII.**

On October 3, 2007, division personnel from the Cookeville Environmental Field Office (CK-EFO) conducted a complaint investigation at the site. The division noted that there had been land clearing activity and road cuts installed at the site without any Erosion Prevention and Sediment Control (EPSC) measures installed, and observed that sediment had entered waters of the state due to the lack of control measures. A road crossing had been installed in an unnamed tributary to Hatfield Creek the disturbed areas had not been stabilized. The division also noted a construction crossing in another unnamed tributary to Hatfield Creek and observed vehicle tracks in the stream at that point.





## **IX.**

On October 15, 2007, the division sent correspondence to the Respondents describing the violations observed during the October 3, 2007, complaint investigation. The Respondents were informed that if land disturbance of one acre or greater was expected to occur at the site, the Respondents were required to obtain coverage under the TNCGP and that any road crossings would have to be constructed in accordance with an ARAP.

The Respondents were instructed to submit in writing, by October 24, 2007, correspondence to the division which indicated the reason for these activities and if any future development of the property was expected to occur. A subsequent file review indicated that coverage under the TNCGP and written ARAP authorization had not been requested or issued for these activities.

## **X.**

On October 18, 2007, the Respondents telephoned division personnel and stated a subdivision was being developed over a 12 to 14 acre parcel of land at the site. The Respondents were again informed that coverage under the TNCGP was required for any land disturbance of one acre or greater and authorization under an ARAP was required before any installation of road crossings to state waters occurred. The Respondents stated, at that time, there were three road crossings at the site and that they would be stabilized as soon as possible.

## **XI.**

On October 18, 2007, the division issued a Notice of Violation (NOV) to the Respondents for the violations observed during the October 3, 2007, complaint investigation. The Respondents were required to submit a response in writing to the division, by October 26,



2007, which was to include an explanation of the activities at the site as well as the corrective measures the Respondents intended to take to prevent additional violations. The Respondents were also instructed to apply for coverage under the TNCGP no later than November 2, 2007.

## **XII.**

On December 11, 2007, division personnel conducted a follow-up site visit. The division noted the Respondents had not implemented any of the corrective actions to the site as instructed in the October 18, 2007, NOV and that additional development of roadways had taken place without EPSC measures installed. The division also noted that three unpermitted road crossings had been constructed in unnamed tributaries to Hatfield Creek, none of which had been stabilized, and that sediment had migrated into waters of the state. To date, the Respondents have not applied for TNCGP coverage as were instructed in the October 18, 2007, NOV.

## **XIII.**

During the course of investigation, the division incurred DAMAGES in the amount of THREE HUNDRED SIXTY FIVE DOLLARS AND SEVENTEEN CENTS (\$365.17).

## **VIOLATIONS**

## **XIV.**

By altering waters of the state without authorization under an ARAP, the Respondents have violated T.C.A. §§ 69-3-108(a)(b), and 69-3-114(b), which state in part:

§ 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j),



shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

**XV.**

By causing a condition of pollution to unnamed tributaries to Hatfield Creek, the Respondents have violated T. C. A. Section § 69-3-114(a):

§ 69-3-114(a) states:

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due



to an unavoidable accident or unless such action has been properly authorized.  
Any such action is declared to be a public nuisance.

### **ORDER AND ASSESSMENT**

#### **XVI.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall, within 15 days of receipt of this Order and Assessment, submit to the CK-EFO at 1221 South Willow Avenue, Cookeville, Tennessee 38506, a NOI to obtain coverage under the TNCGP for the areas of the site affected by unpermitted land disturbance activities. The NOI shall be accompanied by a site-specific SWPPP and the appropriate permit fee. If the division finds the submission incomplete or otherwise unacceptable, the Respondents shall, within 30 days of receipt of such notification, make suggested revisions and modifications as directed by the division and resubmit the corrected NOI and/or SWPPP for review and approval. If no additional land disturbance activities are planned to occur at the site, then the Respondents shall submit a signed written statement to that effect in lieu of a NOI, SWPPP, and appropriate fee.
2. The Respondents shall immediately establish and maintain effective EPSC measures on-site, such that no additional sediment is allowed to enter waters of the state.
3. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.





4. The Respondents shall, within 14 days of receipt of this ORDER, submit written documentation and photographic evidence indicating that appropriate EPSC measures are in place. The Respondents shall submit this written documentation and photographic evidence to the Water Pollution Control manager in the CK-EFO at the address listed in item 1, above.
5. Within 30 days of receipt of this Order the Respondents shall submit a corrective action plan (CAP) to restore the affected stream segments, specifically addressing the removal of the unauthorized road crossings and the stabilization of the affected stream banks. The CAP is to be submitted to the Water Pollution Control manager in the CK-EFO at the address listed in item 1, above.
6. Within 30 days of approval of the CAP, the Respondents shall complete implementation of the CAP and submit written documentation of completion to the Division of Water Pollution Control manager in the CK-EFO at the address listed in item 1, above.
7. The Respondent shall pay a CIVIL PENALTY of TWENTY ONE THOUSAND DOLLARS (\$21,000.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondent shall, within 30 days of receipt of this ORDER, pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00).
  - b. If the Respondent fails to comply with Part XVI, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.



- c. If the Respondent fails to comply with Part XVI, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.
  - d. If the Respondent fails to comply with Part XVI, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.
  - e. If the Respondent fails to comply with Part XVI, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.
  - f. If the Respondent fails to comply with Part XVI, item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00), payable within 30 days of default.
  - g. If the Respondent fails to comply with Part XVI, item 6 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00), payable within 30 days of default.
8. The Respondent shall pay DAMAGES to the division in the amount THREE HUNDRED SIXTY FIVE DOLLARS AND SEVENTEEN CENTS (\$365.17).

The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

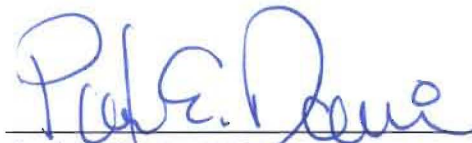
The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated



length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 28<sup>th</sup> day of January 2008.



Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".



If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243.

